

D.B. CIVIL SPECIAL APPEAL(W)NO.283/2006

Suresh Acharya

Vs.

The Municipal Corporation, Jaipur

DATE OF ORDER :: 08-03-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Ajeet Bhandari, for the appellant.

Shri H.V. Nandwana, for the respondent.

This appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant. The appellant had filed the writ petition seeking direction for allotment of plot of land or alternatively for refund of the amount with interest.

The factual matrix of the case is that the respondent, Jaipur Municipal Corporation, invited applications for allotment of residential plots under a scheme floated by it. The appellant applied for allotment of a plot. He was allotted a plot and on demand, he deposited Rs.1,91,287/- being price of the plot on 17.7.1995. As circumstance would have it, possession of the land could not be delivered to the appellant on account of some dispute with third party.

The case of the respondent is that on 19.2.1999, the appellant filed application for refund of the amount with interest. Pursuant to the request, on 27.5.1999, the Corporation informed the appellant that

the cheque was ready and he could receive it within three days. There is dispute about receipt of the said letter by the appellant. The learned Single Judge dealing with this aspect observed that even if the case of appellant is accepted that the letter dated 27.5.1999 did not reach him, from the reply filed by the Corporation to the writ petition on 20.4.2000, the petitioner's awareness of the respondent's readiness to pay the amount was established. In that view of the matter, the learned Single Judge directed the Corporation to pay the amount of Rs.1,91,287/- with interest @ 6% from the date of deposit that is 17.7.1995 to 20.4.2000. Not satisfied, the appellant has come in appeal to the Division Bench.

Shri Ajeet Bhandari, learned counsel for the appellant submitted that the appellant deposited the money as demanded by the Corporation on time and he was entitled to a plot of land which was not given to him for reasons not attributable to him. In any case, counsel submitted, if the respondent was not in a position to deliver possession, the appellant should have been suitably compensated by way of interest on the deposited amount @ 18%. Counsel placed reliance on *Brijpal Sharma Vs. Ghaziabad Development Authority*, (2005) 7 SCC 106.

Having given our anxious consideration to the submissions made by the parties, we are of the view that by reason of letter dated 27.5.1999, referred to above,

the petitioner disentitled himself to plot of land. In the said letter, he made request in no uncertain terms to refund the amount with interest. The principal amount i.e. Rs.1,91,287/- was admittedly paid to the appellant under a cheque in course of proceedings in this Court on 25.1.2005.

The only point for consideration, in the circumstances is whether the order of the learned Single Judge awarding interest @ 6% requires any modification. In other words, whether the appellant is entitled to higher rate of interest. Interest basically is paid to compensate a person for the loss suffered by him for parting with the money or on account of delay in payment. If the money is paid, the person is entitled to re-payment but where it is not re-paid on time, the loss suffered by him thereby should be compensated by way of interest. Definite case of the respondent is that on 27.5.1999, the appellant vide Annexure R/1 was called upon to receive the cheque. We are not impressed by the plea of the appellant that letter dated 27.5.1999 was not received by him. Even if it was not so, as observed by the learned Single Judge, the appellant cannot deny that in the reply to the writ petition submitted on 20.4.2000, the respondent had made clear statement to that effect. We were informed that the counsel for the Corporation had produced cheque (which had since expired) in course of hearing before the Single Judge. Production of cheque

indicates willingness and readiness on the part of the Corporation to pay the amount at the relevant time. It is true that the cheque was for the principal amount i.e. Rs.1,91,287/- only. In fairness the respondent should have offered to pay interest on the amount on that date. But the learned Single Judge has already passed order for interest from the date of deposit till the date the appellant came to know about respondent's readiness and willingness to pay the amount i.e. 20.4.2000, we do not think, the order requires any modification. If the appellant did not receive the cheque after 20.4.2000 he has to thank himself for the loss for the subsequent period. The principal amount of Rs.1,91,287/- stands paid. Counsel for the respondent is not aware as to whether interest calculated @ 6% has been paid or not. Assuming that it has not been paid, we direct the Corporation to pay the amount within four weeks.

In the case of Brijpal Sharma(supra), the allotment had been cancelled. The action was found to be unjustified by the High Court which however did not interfere with the cancellation but allowed interest on the deposited amount @ 18%. The depositor approached the Supreme Court and, inter alia, sought enhancement of the rate of interest. The Supreme Court did not oblige. It would thus appear that it was a converse case, and the point for consideration in the appeal by depositor was whether the order of the High

Court required any modification. The decision is of no help to the appellant in the instant case.

The appeal is dismissed subject to observations and direction.

[MOHAMMAD RAFIQ], J.

[S.N.JHA], CJ.

Praveen